VOL. I

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS

INDEX

Page

Page

TABLE OF CASES CITED

TABLE OF CASES CITED (Continued)

TABLE OF CASES CITED (Continued)

CONSTITUTIONS AND STATUTES CITED

IN THE SUPREME COURT
OF THE
UNITED STATES
OCTOBER TERM, 1979
NO._____

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM,

Petitioners

VS.
STATE OF LOUISIANA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners pray that a Writ of Certiorari issue to review the Judgments of the Supreme Court of Louisiana entered November 13, 1978, rehearing denied, December 14, 1978, and the decision of the Supreme Court for the State of Louisiana entered April 27, 1979, refusing a Petition for Certiorari, Mandamus and Prohibition to review the ruling of the Court of Appeal, First Circuit, for the State Louisiana, dated January16, 1979.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Louisiana in STATE OF LOUISIANA VS. DONNIE FRANKLIN COLLUM is reported at 365 So.2d 1272 (La.1978) and is set out in ***Appendix A.*** attached hereto. The original opinion of the Court of Appeal of Louisiana, First Circuit, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, is reported at 364 So.2d 166 (La. App. 1st Cir. 1978) and is set out in ***Appen-***

dix B, attached hereto. The opinion of the Court of Appeal of Louisiana, First Circuit, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, on rehearing, is reported at 368 So.2d 460, (La. App. 1st Cir. 1979) and is set out in *Appendix C.* attached hereto. The decision of the Louisiana Supreme Court denying Certiorari in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM is, at this date, unreported, but is contained in Number 64,336 of the docket of the Supreme Court of the State of Louisiana, and appears in the Order of that Court in *Appendix D*, attached hereto.

JURISDICTION

The judgment of the Supreme Court of Louisiana as it pertains to Petitioner, DONNIE FRANKLIN COLLUM, was entered on November 13, 1978, and a timely Petition for Rehearing was denied on December 14, 1978. Petitioner, DONNIE FRANKLIN COLLUM, sought and obtained from this Honorable Court an Order extending the time to file a Petition for a Writ of Certiorari to May 13, 1979. (See Appendix E)

The first Judgment of the Court of Appeal of Louisiana, First Circuit, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, was entered on October 9, 1978. The second judgment of the Court of Appeal of Louisiana, First Circuit, on rehearing, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, was entered on January 16, 1979. The Judgment of the Supreme Court of the State of Louisiana, denying Petitioner's Application for Writs of Certiorari or of Review was entered April 27, 1979.

Jurisdiction of this Court is invoked under 28 U.S.C.Section 1257 (3), Petitioners having asserted below and they assert in this Court deprivation of rights secured by the Constitution of the United States of America.

QUESTIONS PRESENTED

1. Whether the refusal of the Trial Courts to suppress confessions and statements given by Petitioners, juveniles. fifteen (15) years of age and fourteen (14) years of age and having mental ages of between seven (7) and ten (10) years. which statements were given in complete isolation from any attorney or an adult interested in the welfare of said juveniles who had been fully advised of the rights of juveniles. and after hours of confinement violates the Fifth and Fourteenth Amendments to the Constitution of the United States ?

2. Whether the refusal of the Louisiana Supreme Court and the Court of Appeal, First Circuit, to apply the Rule of *STATE IN THE INTEREST OF DINO*, 359 So.2d 586 (La. 1978) (which Rule prevents the use of statements or confessions taken from a juvenile unless that juvenile actually had consulted with an attorney or an adult interested in the welfare of the juvenile before the waiver, which adult or attorney had been fully advised of the rights of the juvenile). to the confessions taken from Petitioners because said confessions were taken prior to the date of the decision in *STATE IN THE INTEREST OF DINO, Supra*, violates the Fifth and Fourteenth Amendments to the Constitution of the United States?

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

This case involves the following Amendments to the Constitution of the United States:

Amendment V. Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

"No Person shall be held to answer for a capital, or

otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Section 1
CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This case also involves the following provisions of the Constitution of the State of Louisiana of 1974:

Article 1, Section2
DUE PROCESS OF LAW

"No person shall be deprived of life, liberty or property, except by due process of law."

Article 1, Section 3
RIGHT TO INDIVIDUAL DIGNITY

"Section 3. No person shall be denied the equal protection of the laws. no law shall discriminate against a person because of race or religious ideas, beliefs or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

Article 1, Section 13
RIGHTS OF THE ACCUSED

"Section 13. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reasons for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the Court if he is indigent and is charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents."

Article 1, Section 16
RIGHT TO A FAIR TRIAL

"Section 16. Every person charged with a crime is presumed innocent until proven guilty and entitled to a speedy, public and impartial trial in the Parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel

the attendance of witnesses, present a defense, and to testify in his own behalf."

STATEMENT OF THE CASE

This is a petition for Writ of Certiorari to review the judgment of the Supreme Court of Louisiana, entered November 13, 1978, timely hearing denied December 14, 1978, affirming Petitioner, DONNIE FRANKLIN COLLUM'S, conviction. In addition, this Petition seeks Writ of Certiorari to review the Judgment of the Court of Appeal of Louisiana, First Circuit, entered January 16, 1979, affirming Petitioner, SCOTTY LYNN COLLUM'S, adjudication as a delinquent and the Judgment of the Supreme Court of Louisiana, entered April 27, 1979, refusing to grant Writ of Certiotari or Review of the Judgment of the Court of Appeal of Louisiana, First Circuit.

Petitioner, DONNIE FRANKLIN COLLUM, a fifteen (15) year old at the time of the alleged crime, was charged with four (4) separate counts of first degree murder. Petitioner, SCOTTY LYNN COLLUM, fourteen (14) years old at the time of the alleged crime, was charged with delinquency by having committed four (4) separate murders. Trial counsel filed on behalf of both Petitioners, Motions to Supress Statements, Confessions and Evidence Resulting Therefrom. Evidentiary Hearings were conducted on those Motions, and they were denied by the Trial Judges. Subsequent to those denials, as a result of plea bargaining, Petitioner, DONNIE FRANKLIN COLLUM, entered a plea of "guilty" to four (4) separate charges of second degree murder, with full resevation of his rights to appeal the Judgment of the Trial Court overruling the Motion to Suppress Evidence. As a result of the four (4) guilty pleas by DONNIE FRANKLIN COLLUM, he was sentenced by the Trial Court to four (4) consecutive life terms, without benefit of parole, probation or suspension of sentence for a period of FORTY (40) years.

Subsequent to the denial of his Motion to Supress, Petitioner, SCOTTY LYNN COLLUM, as a result of plea bargaining, entered a plea of "guilty" to being a juvenile delinquent by the commission of four (4) separate charges of second degree murder, with full reservation of his rights to appeal the Judgment of the Trial Court overruling the Motion to Suppress Evidence. As a result of the guilty plea entered by PETITIONER, SCOTTY LYNN COLLUM, he was committed to the Department of Corrections of theState of Louisiana for an indefinite period of time not to exceed his twenty-first (21st) birthday.

In either May or June, 1977, Jessie Collum, his wife and two children were killed in Lafourche Parish, Louisiana. Petitioner, DONNIE FRANKLIN COLLUM, (at the time of the incident, fifteen (15) years of age) and his brother, SCOTTY LYNN COLLUM, (at the time of the incident, fourteen (14) years of age), were arrested at the home of their mother in Victorville, San Bernadino County, California, at approximately 2:30 o'clock, P.M. on June 3, 1977. At the time of their arrest, the two juveniles and their mother were advised that they were being arrested on charges of "Auto Theft" stemming from the fact that the boys had been found in possession of Jessie Collum's car in Benson, Arizona, without his authorization. Jessie Collum was the natural father of Petitioners. Despite these representations ot Petitioners, arresting officers were fully aware that the juveniles were wanted in connection with the killings described above.

At the time of their arrest, Petitioners were handcuffed, placed in the rear seat of a police unit, and, while the unit was turning around and driving off, they were allegedly read their *Miranda* rights from a card by the same officer who was turning the police unit around and driving it to the police station. Thereafter, the juveniles were "reminded" of their *Miranda* rights, but they were not repeated prior to Petitioners' giving statements to the California Police.

Petitioners were taken to the Sheriff's Office substation, a police facility occupied by uniformed policemen and containing cells for the incarceration of prisoners and further containing a number of adult prisoners and offenders. At the police station, the boys were handcuffed to chairs, first in an interrogation room occupied by both of them, and later, in separate interrogation rooms where they were left for a period of time. (Donnie Collum transcript, Volume 2, Pages 36 and 118).

During the period from approximately 2:30 o'clock, P.M. and 9:00 O'clock, P.M., both Petitioners were questioned at the various times. Initially, they were questioned about the automobile which had belonged to their father. Police officers indicated that Petitioners were never again advised of their *Maranda* rights, but they were "reminded" of those rights. Both Petitioners ultimately admitted involvement in the murders which became the subject of the interrogation. The record reveals that Petitioner, DONNIE COLLUM, upon receiving information of the death of his father, became "very nervous" and initially denied any involvement in the deaths. (Scotty Collum Transcript, Vol. 1, Pages 104 through 113. Donnie Franklin Collum Transcript, Vol. 11, Pages 10 through 15).

Petitioner, DONNIE FRANKLIN COLLUM, was interrogated at various times and during one interrogation, a short portion of a tape of a statement taken from , his brother SCOTTY, was played for him. DONNIE COLLUM then agreed to make a statement which was his first confession. (Donnie Collum Transcript, Vol. II, Page 18). Intermittent questioning of Donnie Collum continued, but Petitioners' mother was not permitted to be present or to see either Petitioner until after the completion of all interrogations which resulted in their confessions. She did not see either Petitioner until approximately 9:00 o'clock, P.M. or 9:30 o'clock, P.M. on June 3, 1977. (Donnie Collum Transcript, Vol. II, Page 81).

Petitioners' mother was never apprised of the fact that the

juveniles were being arrested for the alleged killing of Jessie Collum and his family. She testified that she came to the police station within thirty minutes after the arrest of her sons, but was prevented from seeing them or from being with them throughout the interrogation. As a matter of fact, she was told to "go home" and wait until a police officer came to her house to advise her that she could talk to her sons. (Donnie Collum Transcript, Vol. II, Page 71 and 89; Vol. III, Pages 243).

After Petitioners' mother was permitted to meet with them at approximately 9:30 o'clock, P.M. on June 3, 1977 (subsequent to full confessions), they were again questioned outside of the presence of their mother or any attorney by Louisiana Police Officers. This questioning resulted in additional confessions. (Donnie Collum Transcript, Vol. II, Page 42).

Petitioner, DONNIE FRANKLIN COLLUM, testified during a Hearing on a Motion to Suppress Evidence that he did not realize that he did not have to talk with the police, that he did not understand what the right to remain silent meant, or that he was entitled to have an attorney present when he made statements. He further indicated that a person whom he believed to be a jailer told him that he would probably get, at the most, three years for whatever he was charged with. (Donnie Collum Transcript, Vol. III, Pages 316 and 323).

While Petitioners' appeals were pending on direct appeal before the Court of Appeal of Louisiana, First Circuit, and the Louisiana Supreme Court, and prior to any oral argument thereon, on June 15, 1978, the Louisiana Supreme Court decided in *STATE IN THE INTEREST OF DINO, supra,* that:

> ". . . The purported waiver (of rights) by a juvenile must be adjudged ineffective upon the failure by the State to establish any of three (3) pre-requisites to waiver, viz, that the juvenile acutally consulted with an attorney or an adult

before waiver, that the attorney or adult consulted with was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile."
(Parentheses added)

Despite the admisssion of the Louisiana Supreme Court that the confessions extracted from Petitioners did not meet the requirement of *Dino*, the Court determined that the *"Dino"* rule would affect only cases in which the Trial began after June 15, 1978. *(State Vs. Collum, Supra,* at 1277)

FEDERAL QUESTIONS RAISED AND DECIDED BELOW

I.

Prior to Trial, Petitioners moved to suppress the confessions, statements and evidence which was obtained therefrom and upon which their ultimate convictions were based on the grounds that said confessions and statements were not given freely and voluntarily and thus, their rights against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution were violated. (Scotty Collum Transcript, Vol. I, Page 27. Donnie Collum Transcript, Vol. I, Page 11). In substance, Petitioners took the position that the conduct of interrogation of a juvenile, even younger in mentality than his physical years, without any advice from parents or attorneys, in isolation and under the pretense that he was being held for a relatively minor charge, constituted a de facto compelling of self-incrimination. The contention was that the confessions and statements received by law enforcement officials were not given freely and voluntarily in view of the youth of Petitioners, the seriousness of the crime for which they were in fact being held, and in view of the conditions under which they were interrogated. The Trial Courts denied both Motions to Suppress. (Scotty Collum Tanscript, Vol. II, Pages 293 through 312. Donnie Collum Transcript, Vol. I, Pages 40

through 53).

II.

Subsequent to Petitioners' convictions, after lodging of appeals with the Court of Appeal of Louisiana, First Circuit, and the Louisiana Supreme Court, but prior to oral argument thereon or a decision by that Court, the Louisiana Supreme Court rendered its decision in ***STATE IN THE INTEREST OF DINO*** , ***Supra,*** Which, in summary, determined that the confession of a juvenile could not be considered free and voluntary, and thus , admissible, and, therefore, could not be considered acceptable under the Fifth Amendment to the United States Constitution and under Article I, Section 2, 3, 13 and 16 of the Louisiana Constitution of 1974, unless the juvenile's waiver of rights occurred after full consultation with parents and/or a guardian and/or an attorney interested in the welfare of the juvenile and fully apprised of his rights. Petitioners had made precisely that argument in the Trial Court below on the Motions to Suppress Evidence which were filed therein and they renewed that argument before the Louisiana Supreme Court and the Court of Appeal of Louisiana, First Circuit, subsequent to its decision in *Dino, Supra.* The Trial Courts rejected these arguments by refusing to grant the Motions to Suppress Evidence. Appellate Courts affirmed.

III.

In the course of their arguments, both orally and in brief, before the Louisiana Supreme Court, Petitioners contended that the Rule as enunciated in ***STATE IN THE INTEREST OF DINO, Supra,*** should be applied retroactively, at least to the cases involving Petitioners. This argument was founded on the ground that the Rule enunciated in *DINO* went to the integrity of the fact finding process and would not work a severe hardship on law enforcement officials, and further on the basis that *Dino* was decided before Petitioners' convictions had

become final, in that their appeals were pending and not yet finally determined by the highest Courts of Appeal of Louisiana. Additionally, Petitioners asserted to the Louisiana Supreme Court that it had applied the *Dino* rule to cases in which Defendants were convicted prior to the decision in *Dino* (See *STATE IN THE INTEREST OF LEANDER JONES*, 360 So.2d 1181 (La. 1978), and a refusal by the Louisiana Supreme Court to apply that Rule to Petitioners' case constituted a refusal to grant to them the equal protection of the laws and due process of the law required by Amendments Five and Fourteen of the United States Constitution and Article 1, Section 2, 3, 13 and 16 of the Constitution of the State of Louisiana of 1974. The Louisiana Supreme Court and the Court of Appeal of Louisiana, First Circuit, refused to apply the constitutional doctrine established in *STATE IN THE INTEREST OF DINO, Supra.* (See *STATE V, COLLUM, Supra,* and *STATE IN THE INTEREST OF COLLUM, Supra,* both annexed as appendices).

ARGUMENT AND REASONS FOR GRANTING THE WRIT

1. This Court should grant Certiorari to consider whether confessions extracted from juveniles fifteen and fourteen years of age and having mental ages of between seven and ten years, without consultation with an attorney or an adult interested in the welfare of said juveniles, while said juveniles were held in complete isolation from all other persons and after having been read their "rights" only one time under confusing circumstances should be suppressed.

It is axiomatic that the Fifth Amendment to the United States Constitution prohibits the use of confessions obtained from a Defendant unless those confessions are given freely and voluntarily. This Court has applied that rule to the states under the fourteenth Amendment to the United States Constitution and has specifically set forth a requirement that a Defendant be fully apprised of specific rights prior to the taking of any

statements or confessions. *MIRANDA VS. ARIZONA*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed. 2d 694 (1966). The people of the State of Louisiana have adopted in their Constitution the requirements of *MIRANDA* at Article I, Section 13 thereof.

The question of the propriety of a confession or statement taken from a juvenile is far more critical than that involving an adult. The Supreme Court of the State of Louisiana has recognized that fact in *STATE IN THE INTEREST OF DINO, Supra,* by stating:

> "Assessments of how the 'totality of circumstances' affected a juvenile in a particular case can never be more than speculation. Furthermore, whatever the background of the juvenile interrogated, assistance of an adult acting in his interest is indispensable to overcome the pressures of the interrogation and to ensure that the juvenile knows he is free to exercise his rights at that point in time." 359 So.2d at 592.

Similarly, this Honorable Court has refused to accept as free and voluntary, confessions from a juvenile when the slightest question as to the purported waiver exists. In *GALLEGOS VS. STATE OF COLORADO*, 370 U.S. 49, 82 S. Ct. 1209; 8 L.Ed. 2d 325 (1962), subsequent to a juvenile's arrest, the following events took place: (1) the child's mother attempted to see him; (2) The child's mother was not permitted to see the child; (3) The child was held in custody for a period of approximately seven days; and (4) On January 7, the child signed a full confession. In overturning the confession, the United States Supreme Court made the following observations:

> "The fact that Petitioner was only fourteen years old puts this case on the same footing as *HALEY VS. OHIO*, 332 U.S. 596; 68 S.Ct. 302; 92 L.Ed. 224. There was here no evidence of prolonged questioning. But the five-day detention-during which time the boy's mother unsuccess-

fully tried to see him and he was cut off from contact with any lawyer or adult advisor – gives the case an ominous cast. The prosecution says that the boy was advised of his right to counsel, but that he did not ask either for a lawyer or for his parents, but a fourteen year old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights – from someone concerned with securing him of those rights – and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the Petitioner the protection which his own maturity could not. Adult advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a fourteen year old boy would not be able to know, let alone assert, such constitutional rights as he had. To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights." 370 U.S. at 52

Similarly, in *HALEY VS. STATE OF OHIO*, 332 U.S. 596, 68 S. Ct. 302; 92 L.Ed. 224 (1948) this Court declared that when a "mere child" is involved, ". . . special care in scrutinizing the record must be used". 332 U.S. at 599 The Court amplified that statement by explaining that:

"Age fifteen is a tender and difficult age for a boy of any

race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is a period of great instability which the crisis of adolescence produces. A fifteen year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men, possibly, might stand the ordeal from midnight to 5:00 o' clock, A.M. But we cannot believe that a lad of tender years is a match for for the police in such a contest." 332 U.S. at 599-600

In the case now before this Court, in connection with the interrogation of SCOTTY COLLUM, police officers who testified during the Motion to Suppress Evidence went to great length to make the period of interrogation appear to have been broken into small segments. The bar fact remains, however, that SCOTTY COLLUM, a fourteen (14) year old youth, was imprisoned, handcuffed and whisked from his mother and family at approximately 2:30 o'clock, P.M. on June 3, 1977, and was not permitted to see his mother again until 9:30 o'clock, P.M., some seven (7) hours later, and following the giving of a confession. (Scotty Collum Transcript, Vol. I. Page 55 and Vol. II, Page 2. Subsequent to that visit with his mother at 9:30 o'clock, P.M., after having given a confession, Scotty was retained in confinement until a second statement was taken from him at approximately 1:00 o'clock, A.M. on the following day, some ten and one-half hours after his arrest. (Scotty Collum Transcript, Vol. I, Page 172). During the entire time, Scotty was apparently confined to one small room, for a period of time handcuffed to a chair, and deprived of consultation or visitation with any family, parents, attorney or other adult, except the police officers by whom he was being questioned.

The exact procedure was following with regard to the interrogation of DONNIE FRANKLIN COLLUM, Scotty's fifteen year old brother. In addition to the interrogations conducted

between 2:30 o'clock, P.M. and 9:00 o'clock, P.M., additional interrogations were conducted from midnight until 2:00 o'clock, A.M. the following day. (Donnie Collum Transcript, Vol. II, Page 42). In addition, DONNIE COLLUM testified during the Motion to Suppress Evidence that he did not realize that he did not have to talk with the police and he further indicated that he did not understand what the right to remain silent meant and that he was entitled to have an attorney present when he made statements. (Donnie Collum Tanscript, Vol. III, Pages 312 through 351). Moreover, it is apparent that DONNIE COLLUM'S statements were influenced by a person whom he believed to be a jailer and who told him that he would probably get, at the most, three years. (Donnie Franklin Collum Transcript, Vol. III, Page 316 and 323).

The Louisiana Supreme Court explained in *STATE IN THE INTEREST OF DINO, Supra,* that:

> "Although the *Maranda* Court did not express itself specifically on the special needs of juveniles confronted with police interrogation, the reasons given for making the warnings an absolute pre-requisite to interrogation point up the need for an absolute requirement that juveniles not be permitted to waive constitutional rights on their own." 359 So.2d at 591.

In striking down the confession obtained in *HALEY VS. STATE OF OHIO, Supra,* this Honorable Court assessed the facts and circumstances apparent on the record and comment ed:

> "No friend stood at the side of this fifteen year old boy as the police, working in relays questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no further, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend

> was called during the critical hours of the questioning." 332 U.S. at 600

Similarly, diring the questioning of SCOTTY and DONNIE COLLUM, no one but the police were present for hours. The young boys were initially misled by the police (as was their mother) to believe that they were being taken into custody only for the investigation of the unauthorized use of an automobile. The trickery employed by the police in this situation would make suspect statements taken from an adult, let alone children as in the case at bar.

It is suggested to this Court that the confessions obtained from DONNIE and SCOTTY COLLUM are best described in the terms employed by this Court in *HALEY VS. STATE OF OHIO, Supra,* at pages 600 and 601;

> "The age of Petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combined to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law."

This Court continued in *HALEY*

> "But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for consti-

tutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain." 332 U.S. at 601

Here, as in *HALEY*, police officers merely "formalized" the constitutional requirements for advice of rights. As a matter of fact, the rights of the juveniles were read to them one time only, immediately after their sudden and unexpected apprehension, in the back of a moving police car, surrounded by police officers, and by an officer who allegedly was driving the vehicle and turning it around at the same time he was reading the rights from a card. (Scotty Collum Transcript, Vol. I, Page 99). It is apparent that no one read or explained their rights to these children after the initial reading described above. This is admitted by the police officers throughout their testimony. This was true, despite the fact that many hours had elapsed since that traumatic arrest at their mother's home. (Scotty Collum Transcript, Vol. I, Page 75). It is submitted that under the conditions described throughout the transcript by the officers themselves, fifteen and fourteen year old boys could not be expected to absorb and properly comprehend and understand the rights of which they had been "advised" in the midst of the sudden shock of their arrest and their surroundings.

This Court is asked to seriously question the Trial Court's apparent conclusion that no inducements, promises or threats or other improper tactics were employed by police officers. In support of this position, Petitioners invite the Court's attention to the obvious attempts at deceit by police officers. Note their conscious avoidance of informing the children themselves or their mother of the real reason for their arrest. (Scotty Collum Transcript, Vol. I, Page 72).

If all of the safeguards which the police officers contended

they utilized were, in fact employed, and if the juveniles truly were not threatened, induced, or in any other way improperly persuaded to confess, why were the entire interviews which were conducted not included on the tapes which the officers made? Note that Detective Woodrum admits that although the interview with SCOTTY COLLUM, which he conducted, took between two and two and one half hours, he did not begin the tape until Scotty "admitted his participation in the homicide." (Scotty Collum Transcript, Vol. I, Page 65). Interestingly, Sergeant Sodaro finally confessed that he did not begin to tape record the interview with Scotty until they "went over it a second time". (Scotty Collum Transcript, Vol. I, Page 94).

Sergeant Sodaro declared his attempts to "explain" Scotty's "fallacies" in his statement about the auto in which he had been riding and Sergeant Sodaro claimed that he "explained" the California juvenile law to this child, but he failed to explain why he did not tape any of these discussions. (Scotty Collum Transcript, Vol. I, Page 112). In addition, Sergeant Sodaro unwittingly admitted that he did not explain to SCOTTY COLLUM that his statement could be used against him. (Scotty Collum Transcript, Vol.I, Page 113).

Petitioners ask this Court to question seriously the motives of the officers involved as they visited these juveniles' mother at 3:00 o'clock, A.M. on June 4, 1977, to explain to her why it would be "economically better" if she did not obtain an attorney to represent her and her son at the extradition proceeding. (Scotty Collum Transcript, Vol. I, Page 113 and 118). Petitioners ask that this Court question the veracity and the honesty of the police officers who claim they advised Scotty of his rights between midnight and 1:00 o'clock, A.M., on June 4, 1977, but failed to include that conversation on the tape recording of the interview. (Scotty Collum Transcript, Vol. I, Page 176 and 177).

Petitioners ask this Court to question seriously the motives

of police officers who informed the mother of fifteen and fourteen year old boys whom they have apprehended in connection with four (4) murders, That they merely wanted to ask the boys a few routine questions about the possession of their father's automobile and that she should "go back home" until the police sent someone to get her. (Scotty Collum Transcript, Vol.II, Page 224 and 225). Finally, Petitioners urge that this Court condemn both the motives and the practices resulting therefrom of police officers who attempt, through a veiled threat of the hell hole known as "Glen Helen" to dissuade these childrens' mother from challenging extradition. (Scotty Collum Transcript, Vol. II, Page 228 and 229).

These isolated vignettes appearing fleeting throughout the record should be considered further in the light of the testimony of the juveniles' mother which described the "roomful" of police officers which she encountered when she arrived at the police station (Scotty Collum Transcript, Vol. II, Page 232), the bruised wrists of one of her sons which she observed (Scotty Collum Transcript, Vol. II, Page 230), and the spontaneous comment of Scotty, "Mother, if they ask you questions for that long, . . . you'd say you'd done it too". (Scotty Collum Transcript, Vol. II, Page 241).

This Court's great concern for confessions taken from juveniles is reflected in its decision in *IN RE: GAULT*, 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed. 2d 527 (1967). Therein, this Court stated:

> "We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique - but not in the principle - depending on the ***age of the child*** and the ***presence and competence of parents.*** The participation of counsel will, of course, assist the police, Juvenile Courts and Appellant Tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ***ignorance of rights*** or of adolescent fantasy, fright or despair. (Emphasis added). 387 U.S. at 55

In short, this Court has consistently looked to the presence of competent adults and/or legal counsel in order to determine whether a juvenile's confession is free and voluntary. This Court has never applied the bare standards for determining the propriety of an adult confession. This Court has correctly recognized that a child of tender years lacks the ability to make a knowing and free choice, especially when the crime is as serious as that now before this Court.

In *WEST VS. UNITED STATES*, 399 F.2d 467 (1968), certain specific factors were set forth to assist in resolving whether a waiver of rights on the part of a minor was valid. Those factors include: (1) The age of the accused; (2) The education of the accused; (3) The knowledge of the accused as to both the substance of the charge, if any has been filed, and as to the nature of his rights to consult with an attorney and remain silent; (4) Whether the accused is held incommunicado or allowed to consult with relatives, friends or an attorney; (5) Whether the accused was interrogated before or after the formal charges had been filed and the method used in interrogation; (6) The length of the interrogation; (7) Whether the accused refused to voluntarily give statements on prior occasions; and (8) Whether the accused has repudiated an extrajudicial statement at a later date.

In the case before this Court, the juveniles at fifteen (15) and fourteen (14) years of age, must be considered at the lower end of the age spectrum. In addition, at the hearing on the insanity issue (Donnie Collum Transcript, Vol. III, Page 5), Dr. Robicheaux stated that it was his impression that, Donnie was quite dull mentally and roughly evaluated his mental age

at seven (7) to ten (10) years. Thus, a special danger arose with the waiver of rights by him without advice of parents, counsel, or other adult interested in his welfare or fully apprised of his rights.

The second factor listed in the cited case is the knowledge of the accused as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and remain silent. Neither DONNIE COLLUM nor SCOTTY COLLUM was ever advised of the nature of the actual charges pending against them. These children and their mother were told merely that they were being arrested for "auto theft". (Donnie Collum Transcript, Vol. II, Pages 71, 89; Vol. III, Pages 239, 248, 249, and 276). It is apparent, therefore, that only after the confessions were obtained, did the children and their mother learn of the actual charges for which they were being detained.

It is also apparent that DONNIE and SCOTTY COLLUM were held "incommunicado" for the entire period until they made confessions. A reading of the record in the case before this Court reveals that neither child saw anyone but his interrogator from 2:30 o'clock, P.M. on June 3, 1977, until 9:30 o'clock, P.M. on that date, The only persons whom either saw finally at 9:30 o'clock, P.M. after giving confessions, were their mother and sister. It was obviously too late to obtain "advice of counsel" from anyone at that time.

The record reveals the glaring failure of the police interrogators to remind either juvenile or to determine from them whether they wished to obtain advice from their mother. Officer Sodaro admitted that the children's mother may have asked to see her sons before the interviews, but he conceded that, had she asked to see them, she would not have been permitted to see them until they were "through with the interview". (Donnie Collum Transcript, Vol. II, Page 81).

In addition, Detective Sodaro admitted that all indications given to the juveniles and their mother were that they were being arrested for grand auto theft. (Donnie Collum Transcript, Vol. II, Page 71). Officer Woodrum also admitted that he did not ask the children's mother if she wished to be present during the interview. (Donnie Collum Transcript, Vol. II, Page 47). These questionable practices and omissions by California Police Officers were later repeated or utilized by Louisiana Officers upon their midnight arrival.

Thus, the conclusion becomes inescapable that the purported waiver of rights on the part of the two juveniles before this Court cannot possibly withstand the tests that must be applied in such cases. It is submitted to this Court that the refusals of Trial Courts and Appellate Courts to suppress the confessions and all evidence obtained as a result therefrom directly violates the rights of these children as protected by the Constitution of the United States as clearly specified by this Honorable Court in the cases cited above.

II. This Court should grant Certiorari to consider whether the rule of the Louisiana Supreme Court to the effect that the purported waiver of rights by a juvenile will be considered ineffective upon the failure of the State to establish any of the three prerequisites to waiver. viz., that the juvenile actually consulted with an attorney or an adult before waiver, that the attorney or adult consulted was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile, should have been applied to the confessions obtained from Petitioners, although said confessions were taken prior to the decision by the Louisiana Supreme Court setting forth said rule.

At the outset, Petitioners submit to the Court that the Louisiana Supreme Court violated Petitioners' rights to due

process and equal protection of the laws by determining that to apply the rule established in *STATE IN THE INTEREST OF DINO Supra* to the case at bar would require giving total retroactive effect to the *DINO* rule. By virtue of prior decisions of the Louisiana Supreme Court and especially its decision in *STATE OF LOUISIANA IN THE INTEREST OF LEANDER JONES, Supra,* (See Appendix F) it is apparent that a true issue of retroactivity did not exist or that the Louisiana Supreme Court had given partial retroactive effect to the *DINO* rule in some instances but not in others in a totally unjust and unequal manner.

The Louisiana Supreme Court rendered its decision in *STATE IN THE INTEREST OF DINO, Supra,* While the appeals of DONNIE and SCOTTY COLLUM were pending The Collum appeals presented to the Louisiana Supreme Court the identical issues considered and decided in the *DINO* case.

The Louisiana Supreme Court also disposed of issues identical to those presented in*DINO* and in the instant case in the matter entitled *STATE OF LOUISIANA IN THE INTEREST OF LEANDER JONES,Supra,* decided July 3, 1978. The following time elements were applicable in the *JONES* case: The date of the crime was November 3, 1977. Between that date and April 18, 1978, a Motion to Suppress A Confession given by the juvenile was filed, heard and denied by the Trial Court. An appeal was taken to the First Circuit of Appeal which Court upheld the Trial Court's decision.

On April 18, 1978, an Application for Writ of Certiorari was filed with the Louisiana Supreme Court, but no action was taken on that Application until July 3, 1978, subsequent to the *DINO* decision. On July 3, 1978, the Louisiana Supreme Court granted the Application for Writs in *JONES,* reversed the conviction of the Defendant, and remanded the case to the Court of Appeal of Louisiana for the First Circuit for "reconsideration in the light of *STATE IN THE INTEREST OF DINO"* 360 So.2d at 1181

The contentions raised by Petitioners in the Trial Court were to the effect that confessions obtained from Petitioners were inadmissible and could not be considered free and voluntary because neither parents nor any attorney interested in their welfare were present during the taking of those confessions. In a Memorandum in Support of the Motions to Suppress Evidence filed by Trial Counsel in the DONNIE FRANKLIN COLLUM matter, prior to a decision on the Motion to Suppress Evidence by the Trial Court, counsel stated, "We contend that a minor is without legal capacity to waive constitutional rights without the consent of his parents". (See Memorandum of Trial Counsel, Appendix G) Thus, the identical issues determined in the *DINO* case and in the *JONES* case were presented to the Louisiana Supreme Court prior to the *DINO* decision and, in fact, contemporaneously with the presentation of those issues in the *DINO* case.

This Honorable Court has consistently taken the position that even when a new rule of Court is to be applied prospectively only, the application of that rule will include cases pending on direct appeal. *LINKLETTER VS. WALKER,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed. 2d 601 (1965). See also, *UNITED STATES VS. SCHOONER PEGGY,* 1 Cranch 103, 2 L.Ed. 49 (1801).

Petitioner further suggests to this Court that the Louisiana Supreme Court failed to grant equal protection of the laws and to render to Petitioners due process of law in determining that an issue of retroactivity existed when the Louisiana Supreme Court decision in the instant case is considered in relation to its previous decisions. In *STATE VS. BECKERT,* 326 So.2d 494 (La. 1976), the issue presented to the Louisiana Supreme Court involved whether the Trial Court's failure to provide instructions to a jury concerning the law applicable to a verdict of "not guilty by reason of insanity" constituted reversal error. In *STATE VS BABIN,*319 So. 2d 367, (La. 1975). the Louisiana Supreme Court enunciated a new rule

concerning that principle. The ***BABIN*** decision was filed on July 25, 1975, and the Trial in the ***BECKERT*** case was completed on May 14, 1975, prior to the *BABIN* decision. In *BECKET*, at Page 495, Justice Dennis explained that, "Because the instant case was not final but on appeal pending a direct review at the time of the *BABIN* decision, we are arguably not presented with an issue of true retroactivity". Similarly, in *STATE VS. LIESK*, 326 So.2d 871 (La. 1976), on rehearing, the Court pointed out that it was not confronted with a question of whether *STATE VS. BABIN, Supra,* was retroactive, because the *LIESK* case was on appeal at the time of the decision in the *BABIN* case.

It is apparent that the identical set of facts as existed in *LIESK* and *BECKET* existed in the instant case when it was before the Louisiana Supreme Court. It is clear that while the Louisiana Supreme Court pondered the questions raised in *STATE IN THE INTEREST OF DINO, Supra,* the DONNIE and SCOTTY COLLUM matters had been appealed to the highest Courts of Appeal in this State aand awaited those Court's decisions. Thus, the Louisiana Supreme Court was not presented with a question concerning the Trial and final conviction based upon a confession taken without following the rules enunciated in *DINO,* but, instead,with confessions which were challenged on the identical principles enunciated in *DINO* and which convictions were not finalized prior to the *DINO* decision.

Arguendo, should this Court decide that the question for consideration *is* one of retroactivity, it is submitted that the rule expressed in *DINO* must be applied, even retroactively, according to the requirements established by this Honorable Court and by the Louisiana Supreme Court. In summary, both the Louisiana Supreme Court and the United States Supreme Court have declared repeatedly that where a new rule goes "to the very integrity of the fact finding process . . ." it will be retroactive in effect. *STATE VS. LEISK, Supra,*

326 So.2d at 876. As was explained by Justice Dennis in his dissent in the case before this Court:

> "Under our established principles of interpretation, a new constitutional doctrine must be given complete retroactive effect when its major purpose is to overcome an aspect of the judicial proceeding which impairs its truth finding function and so raises serious questions about the accuracy of determinations of guilt in past Trials. State v. Swift, 363 So.2d 499 (La. 1978); State v. King, 347 So.2d 1108 (La. 1977); City of Baton Rouge v. Short, 345 So. 2d 37 (La. 1977); cf. Ivan v. City of New York, 407 U.S. 203, 92 S.Ct. 1951, 32 L.Ed 2d 659 (1972); Williams v. United States, 401 U.S. 646, 91 S. Ct. 1148, 28 L.Ed. 2d 388 (1971); Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L.Ed. 2d 601 (1965)." *STATE VS. COLLUM, Supra,* p. 1281.

Similarly, this Honorable Court has explained that:

> "Where the major purpose of new constitutional doctrine is to overcome an aspect of the Criminal Trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect". *WILLIAMS VS. UNITED STATES,* 401 U.S. 646, 653, 91 S.Ct. 1148, 28 L.Ed. 2d 388 (1971).

Certainly, it cannot be contended that the confessions obtained from Petitioners do not go to the integrity of the fact-finding process. It is apparent that the only "process" which would result in any "fact-finding" in the COLLUM matters involved the obtaining of their confessions. Thus, the question of freedom and voluntariness of their confessions goes directly to the integrity of that fact-finding process and the rule and requirement directed by the Constitution of the United States as explained by this Court and the Courts of the

State of Louisiana must apply to all cases, including those involving confessions obtained prior to the ruling in the *DINO* matter.

Thus, this Court stated in *IVAN VS. CITY OF NEW YORK*, 407 U.S. 203, 92 S. Ct. 1951, 32 L.Ed. 2d 659 (1972), "Winship expressly held that the reasonable doubt standard 'is a prine instrument of reducing the risk of convictions resting on factual error' ". 407 U.S. at 204 Similarly, in *TEHAN VS. SHOTT*, 382 U.S. 406, 86 S. Ct. 459, 15 L.Ed. 2d 453 (1965), this Court distinguished the right against self-incrimination (which does not necessarily touch upon the fact-finding process) from the prohibition against coerced confession (which it recognized clearly does touch upon the fact-finding process).

In his dissenting opinion in the case now before this Court, Louisiana Supreme Court Justice Tate declared at Page 1280,

> "The decision (DINO, *Supra*,) recognized the questionable voluntariness and truthfulness of the confession of a juvenile, who responds to interrogation under police custody without consultation with an attorney or an adult member of his family. The rule recognized the general unreliability of confessions of young persons (here, a fifteen year-old boy) responding to interrogation while surrounded by adult police officers and secluded in police custody from the advice and counsel of adults who care".
>
> (First Parenthesis added).

In his dissent, in *STATE V. COLLUM, Supra*, Louisiana Supreme Court Justice Dennis, at Page 1280 and 1281, squarely confronted the reasons which the majority of the Supreme Court in *DINO* gave for establishing the rule:

> "In *DINO*, we plainly stated three reasons why juveniles should not be allowed to waive their constitutional rights if their own. In addition to the main reason – to assure

> that the waiver itself is knowing, intelligent and voluntary - - we set forth two other reasons which relate to the voluntariness of the juvenile's confession, as well to his waiver of rights. We said that [i]f the juvenile decides to talk to his interrogators, the assistance of an adult can mitigate the dangers of untrustworthiness' and 'the likelihood that the police will practice coercion:' and that [t]he presence of such an adult can also help to guarantee that the accused gives a fully accurate statement and that the statement is rightly reported by the prosecution at Trial'. 359 So.2d at 592.

In considering the judicially established rule concerning admission of confessions, this Court recognized their clear involvement with the fact-finding process in *JACKSON VS. DENNO*, 378 U.S. 368, 383, 84 S. Ct. 1774, 12 L.Ed. 2d 908, (1964) When it explained:

> "The danger that matters pertaining to the Defendant's guilt will infect the jury's finding of fact bearing upon voluntariness, as well as conclusion upon that issue itself, is sufficiently serious to preclude their unqualified acceptance upon review in this Court, regardless of whether there is or is not sufficient other evidence to sustain a finding of guilt."

Likewise, in *TEHAN VS SHOTT, Supra*, this Court stated:

> "The basic purpose of a Trial is the determination of truth, and itis self-evident that to deny a lawyer's help throught the technical intricacies of a criminal Trial or to deny a full opportunity to appeal a conviction because the accused is poor is to impede the purpose and to infect a criminal proceeding with the clear danger of convicting the innocent . . . ***the same can surely be said of the wrongful use of a coerced confession***". (Emphasis added). 382 U.S. at 415

Similarly, in ***LINKLETTER VS. WALKER***, ***Supra***, this Court explained,

> "Moreover, coerced confessions are excluded from evidence because of a complex of values, ***BLACKBURN VS. ALABAMA***, 361 U.S. 199 4 L.Ed. 2d 242, 80 S.Ct. 274 (1960) including 'the likelihood that the confession is untrue' " 381 U.S. at 638

An important criterion in determining whether rules of constitutional law newly established by the Court will be applied retroactively is the extent of reliance on the old rule by law enforcement officials. In truth and in fact, the *DINO* decision did not set forth "new" rules. It reiterated the principles and requirements of the Louisiana Constitution in Article I, Section 13, concerning the protection against self-incrimination, and the rule set forth in ***MIRANDA VS. ARIzona***, ***Supra***, In *DINO*, the Court decided that a confession from a juvenile could not be considered free and voluntary unless the guidelines set forth therein were followed. The DINO decision interpreted Article I, Section 13 of the 1974 Louisiana Constitution and declared, "Finally, it appeared that, in fact, there was an intention by the convention to go beyond ***MIRANDA*** and to require more of the State regarding the precise issues now under discussion". *(DINO, **Supra*** at 590).

It is apparent from the Louisiana Supreme Court's decision in *DINO*, therefore, that "new rules" were not being set forth. In fact, the Louisiana Supreme Court was deciding that the law already in effect, embodied in the Louisiana Constitution, required that the practices outlined in *DINO* be followed.

Justice Dennis, at Page 1281 of his dissent in ***STATE VS. COLLUM, Supra*** added:

> "Moreover, other factors which weigh against retroactive effect of a new constitutional doctrine do not apply to

> *DINO*. The extent of reliance on the old rule by Louisiana law enforcement officials was not significant and *DINO'S* impact on the administration of justice will not be severe. . . . The practice now required by *DINO* was foreshadowded in numerous State and Federal decisions. . As early as 1948, the United States Supreme Court recognized that a juvenile's isolation from any friendly adult prior to police interrogation raised serious questions concerning volutariness. See ***HALEY VS. OHIO***, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948) See also, ***GALLEGOS VS. COLORADO***, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed. 2d 325 (1962).

Even the majority of the Louisiana Supreme Court in *DINO*, recognized that the rules set forth therein were not startlingly new and would not cause a grave burden on the administration of justice. In a concurring opinion in ***STATE OF LOUISIANA VS. ROSS***, 343 So. 2d 722 (La. 1977). at Page 729, Justices Tate and Calogero explained:

> "I would say that, in most instances that come before us, the investigating officers have taken the precaution to assure that a juvenile is allowed to confer with his parent or an older member of his family before his is permitted to waive the important Constitutional Right of Counsel. This helps to assure the fairness of his waiver and of his interrogation, and the voluntariness of any statement thereby obtained."

Thus, long before the *DINO* decision, the Louisiana Supreme Court had recognized that the more acceptable and prevalent practice involved the advice of parent and/or attorney to any juvenile prior to the obtaining of a confession. It is obvious that most well intentioned and knowledgeable law enforcement officers have followed this practice for some time. It is equally obvious that as far back in time as March of 1977, the Lousiana Supreme Court forwarned law enforcement

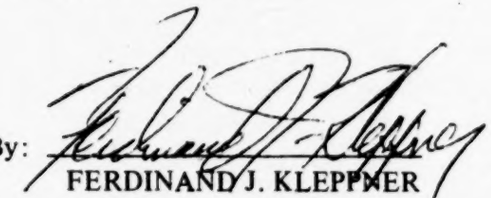
agencies of its inclination to require such protections for juveniles. That warning came from this Honorable Court even before that time, and as far back as 1948.

CONCLUSION

Petitioners pray that the Petition for Writ of Certiorari be granted to review the Judgments and opinions of the Supreme Court of the State of Louisiana and of the Court of Appeal of Louisiana, First Circuit,

Respectfully submitted,

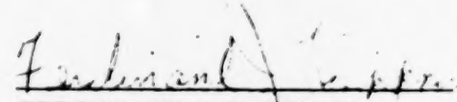
GRISBAUM & KLEPPNER

By: 
FERDINAND J. KLEPPNER
ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of this Petition for Writ of Certiorari were mailed to the following:

Three copies to the District Attorney of the Lafourche Parish, at his mailing address, District Courthouse, Thibodaux, La. 70301 and three copies to the Supreme Court of Louisiana at Supreme Court Building, 301 Loyola Ave., New Orleans, La. 70112.


FERDINAND J. KLEPPNER
ATTORNEY FOR PETITIONERS

APPENDIX A

STATE V. COLLUM

365 So.2d 1272 (La. 1978)

WEST KEY NUMBER SYSTEM

STATE OF LOUISIANA

V.

DONNIE FRANKLIN COLLUM.

Nos. 62157, 62158, 62159 and 62160.

Supreme Court of Louisiana.

Nov. 13, 1978

Dissenting Opinion Dec. 22, 1978

Dissenting Opinion Feb. 1, 1979

Juvenile was convicted in the 17th Jurdicial District Court, Parish of Lafourche, Bernard L. Knobloch and Walter, 1. Lanier, JJ., of second-degree murder and he appealed. The Supreme Court, Summers, J., held that: (1) Louisiana Supreme Court *Dino* decision holding that the confession of person under 17 years of age is inadmissible unless the juvenile actually consulted with an attorney or adult before waiving his right to silence would not be given retroactive effect, and (2) evidence sustained trial court's determination that, under the totality of the circumstances, the juvenile's confession was voluntary.

Affirmed.

Tate, J., dissented and filed an opinion.
Dennis, J., dissented and filed an opinion.
Dixon, J. dissented.

1. Courts Key 100(1)

Balancing process for determining whether decision should be applied retroactively is applicable only where the newly announced rule does not go to the very integrity of the fact-finding process; where the integrity of the fact-finding process is impaired, retroactivity will be imposed.

2. Criminal Law Key 1026

Where accused has pled guilty, only the jurisdiction of the court which received the plea is reviewable on appeal unless the plea of guilty has included a reservation, with the court's approval, of the right to appellate review of a nonjurisdictional ruling.

3. Criminal Law Key 527

Purpose of rule requiring suppression of any confession by a juvenile unless the juvenile has first consulted with an attorney or an adult before waiving his right to silence is to protect the juvenile's right against self-incrimination and to protect his right to counsel

4. Courts Key 100(1)

Louisiana Supreme Court's *Dino* decision that a confession of a person under 17 years of age is not admissible unless the juvenile actually consulted with an attorney or adult before waiving his right to silence will not be given retroactive application and will affect only those cases in which the trial began after June 15, 1978.

5. Criminal Law Key 527

Fact that, when arrested in California, juvenile was placed in a county jail, albeit in a deparate block in which his only contact with adult prisoners was with the one trusty who delivered his food and cleaned an adjoining cell, did not render the juvenile's confession involuntary. LSA-R.S. 13:1577; West's Ann.Cal.Welf. & Inst.Code, §216(b).

6. Criminal Law Key 414

Proper application of the totality of the circumstances test requires that the State sustain the burden of affirmatively proving that the waiver of rights was made freely and voluntarily, with an understanding of the consequences which might flow from such a waiver. LSA-R.S. 15:451.

7. Criminal Law Key 527

The age of a juvenile defendant is a factor which requires the court to give closer scrutiny to the confession than would ordinarily be required of an adult confession.

8. Criminal Law Key 531(3)

Evidence that 15-year-old juvenile had completed the ninth grade, that he was arrested at 2:30 in the afternoon in the presence of his mother, that he was given his *Miranda* rights and then questioned for approximately 40 minutes, that he was then placed in a cell for some six hours, that he was then interrogated for approximately 30 minutes after having been permitted to listen to a portion of a tape recording of his brother's confession, that the juvenile was served a meal and permitted to rest during that time, and that the juvenile had previous contact with law enforcement authorities sustained determination that the juvenile's confession was voluntary.

Ferdinand J. Kleppner, Grisbaum & Kleppner, Metairie, Wilson F. Walters, Wilson F. Walters & Associates, Inc., Denison, Tex., for defendant-Appellant.

William J. Guste, Jr., Atty. Gen., Barbara B. Rutledge, Asst. Gen., Francis F. Dugas, Dist. Atty., Walter K. Naquin, Jr., Asst. Dist. Atty., for plaintiff-appellee.

1274 La.

SUMMERS, Justice.

Jessie Collum, his wife Lenora, and their children, Jeffrey, age nine, and Anna, age six were killed on May 27, 1977 in their trailer home in the Four Point HEights Subdivision to the Town of Raceland, in Lafourche Parish, Louisiana. All had been shot several times; Jessie Collum had also been stabbed several times. Two days later Donnie Collum, who was then fifteen years old, having been born December 21, 1961, and his brother Scott Collum, age thirteen, were stopped by police officers in Benson, Arizona, driving a 1974 Cadillac automobile. The brothers admitted the Cadillac belonged to Jessie Collum, their father by his first marriage to Peggy Mendoza and that they had taken it without permission. The Arizona authorities retained custody of the automobile and the boys were turned over to their mother in Victoriaville, California.

On June 1, 1977 the bodies of the four Collums were discovered. Police authorities in Lafourche Parish ascertained that Donnie and Scott had been living with their father and that the Cadillac was missing. Accordingly, a nationwide bulletin was broadcast in an attempt to locate the Cadillac for investigation in connection with a homicide. As a result of an inquiry to that office on June 3, the San Bernardino County Sheriff's office notified the Lafourche authorities of the whereabouts of Donnie and Scott Collum in Victoriaville, California. Arrest warrants were then issued by the District Judge in Lafourche Parish to arrest them for theft. Donnie and Scott were apprehended on June 3, 1977 and taken to Sheriff's Office Sub-Station in Victoriaville.

They were questioned about the car theft and the killings and gave a statement to the California authorities admitting their guilt of the killings. Later, on the evening of June 3, two Lafourche Parish deputies arrived and Donnie and Scott were again questioned and confessed for a second time.

Upon their return to Louisiana Donnie was indicted by the grand jury for four counts of first degree murder as a juvenile fifteen years of age charged with a capital offense. La.Const.

art. V, § 19; La.Rev. Stat. 14:30; La.Rev.Stat. 13:1570(A)(5). A motion to suppress his confessions was filed, heard and denied on December 5, 1977. The charges were then reduced to four separate counts of second degree murder, to which Donnie pled guilty on February 24, 1978, reserving his right to appeal the ruling on the motion to suppress. On each of the four counts he received a sentence of life imprisonment without the benefit of probation or parole for forty years, such sentences to be served consecutively. La. Rev.Stat. 14:30.1.

On this appeal three assignments of error are urged.

1.

At the outset it must be determined whether this Court's decision in ***State in the Interest of Dino***, 359 So2d 586 (La. 1978), is applicable to this prosecution. By that decision this Court decided that a confession of a person under seventeen years of age is not admissible unless the juvenile actually consulted with an attorney or an adult before waiving his right to silence; that the attorney or adult consulted was interested in the welfare of the juvenile; and if an adult other than an attorney is consulted, the adult also must be fully advised of the rights of the juvenile.

If the *Dino* holding applies to the case at bar, the State readily concedes the conviction must be reversed because the *Dino* decision was not complied with. No attorney, parent or adult friend actually consulted with the defendant at the interrogation. The State submits, however, that *Dino* should not be applied retroactively and the case should be governed by the "Totality of Circumstances Test", the rule of law in these cases for many years in this State and in the Federal courts.

Dino became effective June 15, 1978. The offenses in the case before us occurred on May 27, 1977, and the guilty pleas were entered on February 24, 1978. A motion to appeal was

filed on March 3, 1978 returnable on May 2, 1978, and filed in this Court on May 3, 1978. Thus the issue of the retroactivity of the *Dino* decision, or at least its applicability to cases on direct appeal at the time of the decision, is squarely presented.

The *Dino* case dealt in part with a confession obtained from a thirteen-year-old boy as the result of a custodial This Court concluded that the State had failed to show beyond a reasonable doubt under the totality of circumstances test that the juvenile had knowingly and intelligently waived his privilege against self-in-crimination and his right to counsel. This Court felt, however, that the "exclusive use of the totality of circumstances test in relation to waivers by juveniles tends to mire the courts in a morass of speculation." To end this speculation on the part of both the courts and the police, it was decided that to demonstrate a knowing and intelligent waiver on his part, the State "must affirmatively show that the juvenile engaged in a meaningful consultation with an attorney or an informed parent, guardian, or other adult interested in his welfare before he waived his right to counsel and privilege against self-incrimination." This Court recognized that though most minors are not mature enough to understand their rights nor competent to exercise them, some minors would be capable; nevertheless, it made the consultation an absolute prerequisite to waiver because such a requirement was a step toward guaranteeing knowing and intelligent waivers regardless of the minor's degree of sophistication. 359 So2d at 591-94.

In its impact on the law and police custodial interrogation, this decision may be likened to the United States Supreme Court decision in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), in which the Court made the giving of certain warnings or rights an absolute prerequisite to the admissibility of an in-custody confession. As in this case, it was not long before the courts were called upon to determine

the retroactivity of what has become known as the *Miranda Rule*.

In *Johnson v. New Jersey*, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882 (1966), the United States Supreme Court decided that the *Miranda Rule* would apply only to cases in which the trials commenced after the decision was handed down. Three criteria were formulated for deciding the retroactivity issue: 1) the purpose of the new rule; 2) the reliance which may have been place upon prior decisions on the subject; and 3) the effect on the administration of justice of a retroactive application.

[1] This Court's decision in *State v. king*, 347 So.2d 1108 (La. 1977), took the position that the balancing process of the criteria applied in *Johnson v. New Jersey* would be explored only where a newly announced rule does not go to the very integrity of the fact-finding process. Where the integrity of the fact-finding process is impaired, retroactivity would be imposed.

While the integrity of the fact-finding process is inextricably entwined with the three criteria applied in *Johnson v. New Jersey*, a separate and threshold consideration of that factor is articulated in keeping with the mandate of *State v. King*.

Under the law as it existed when Connie Collum gave the confessions, it was not sacramental to the validity of a juvenile's confession that the State "must affirmatively show that the juvenile engaged in a meaningful consulation with an attorney or informed parent, guardian or other adult interested in his welfare before he waived his right to counsel and privilege against self-incrimination" as mandated by this Court's decision in *Dino*. Aside from his claim that the *Dino* decision should be applied retroactively to his case to invalidate his confession, defendant makes insubstantial claims that his confession was involuntary. As this opinion points out hereafter no procedures were employed in taking the statements which were not permissible under the then prevalent jurisprudence approving the

totality of circumstances test.

[2] The major design of the new rule announced in *Dino*, even if it were to overcome an aspect of the criminal trial that substantially impairs its truth-finding function, is not violated in this case where there was no trial and the accused has pled guilty. In such a situation, this Court's jurisprudence and the jurisprudence of the Federal [1276 La.] courts have consistently held that only the jurisdiction of the court which recieved the plea is reviewable on appeal. *Lefkowitz v. Newsome*, 420 U.S. 283, 95S.Ct. 886, 43 L.Ed.2d 196 (1975); *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970); *State v. Torres*, 281 So.2d 451 (La. 1973); *State v. Foster*, 263 La. 956, 269 So.2d 827 (1972). The rule is, however, subject to an exception applicable to this case. With the court's approval defendant reserved the right to appellate review of the non-jurisdictional ruling on the motion to suppress. Review of that ruling is therefore permissible under this exception. *State v. Crosby*, 338 So.2d 584 (La.1976).

But the *Dino* rule does not go to the very integrity of the fact-finding process. The decision purports to assure that a juvenile answering questions at a custodial interrogation does so with an intelligent inderstanding of his right to remain silent and of the consequences which may flow from relinquishing that right. This is the same purpose that the older voluntariness standard and the prophylactic *Miranda* rule served. Consequently, although an additional safeguard was announced in *Dino*, an accused whose case was being tried or on appeal on the effective date of *Dino* was nevertheless not deprived of asserting the same claim of involuntariness under the totality of circumstances test.

In the case at bar no evidence has been excluded and no question of the voluntariness or accuracy of the guilty plea is urged. *Williams v. United States*, 401 U.S. 646, 91 S.Ct. 1148, 28 L.Ed.2d 388 (1971). Only the validity of defendant's con-

fession is argued. The very integrity of the fact-finding process is unaffected.

Complete retroactive effect was not given to the exclusionary rule of *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L. Ed.2d 1081 (1961); in *Linkletter v. Walker*, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965). Likewise in *Tehan v. Shott*, 382 U.S. 406, 86 S.Ct. 459, 15 L.Ed.2d 453 (1966), the Court declined to give retroactive effect to *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964). See also, our opinion in *City of Baton Rouge v. Short*, 345 So.2d 37 (La. 1977).

Having decided that the *Dino* rule does not impair the integrity of the fact-finding process under the circumstances of this case, an analysis of the three criteria announced in *Johnson v. New Jersey*, supra, is appropriate.

[3] The purpose of the new rule enunciated in *Dino* is twofold: to protect the juvenile's right against self-incrimination and his right to counsel. It is not argued that the risks of convicting an innocent person are increased when the right against self-incrimination is unknowingly waived. An increased danger comes only when the incriminating statement given is likely to be false, a circumstance resulting not from a mere waiver of the right, but from additional outside pressures. The absence of counsel at this pretrial stage does not increase the risk of convicting an innocent either. The most counsel could do at this stage (for the person being questioned) is either bargain for a plea or advise his client not to answer any questions; both functions are undoubtedly of more use to a guilty person than to an innocent one. In sum, the *Dino* rules are not meant to avoid a risk of convicting an innocent person, and the assence of the *Dino* procedure does not affect the integrity of the fact-finding process.

Reliance which may have been placed upon prior decisions on the subject was the second criteria examined in Johnson. Prior to the *Dino* decision the "totality of circumstances" test was well accepted in Louisiana as a basis for deciding whether a juvenile had knowingly and intelligently waived his right. *State v. Hills*, 354 So.2d 186 (La. 1977); *State v. Hall*. 350 So.2d 141 La. 1977); *State v. Ross*, 343 So.2d 722 (La. 1977); *State v. Ghoram*, 328 So.2d 91 (La. 1926); *State v. Sylvester*, 298 So.2d 807 (La.1974); *State v. Melanson*, 259 So.2d 609 (La.App.1972).

The prevailing rule throughout the nation at the time was to the same effect. *West v. United States*, 399 F.2d 467 (5th Cir. 1968); *Mosley v. State*, 246 ARk. 358, 438 S.W.2d 311 (1969); *People v. Lara*, 67 Cal.2d 365, 62 [1277] Cal.Rptr. 586, 432 P.2d 202 (1967), *cert.denied*, 392 U.S. 945, 88 S.Ct. 2303, 20 L.Ed.2d 1407; *State v. Roberts*, 274 So.2d 262 (Fla. App. 1973); American Law Institute, Model Code of PReArraignment Procedure, pp. 361-62 (1975).

From these authorities it is abundantly clear that neither the courts nor law enforcement authorities in Louisiana were aware that a juvenile's custodial interrogation could not under any circumstance be conducted without consulation with attorney, parent or adult as set forth in *Dino*. Reliance on prior decisions on the subject was therefore explicit.

[4] Considering the purpose of the rule announced in *Dino* and the undoubted firm and justifiable reliance upon the "totality of circumstances test" repeatedly approved by the courts of Louisiana and elsewhere, an extremely detrimental effect upon the administration of justice would result from a retroactive application of the *Dino* rule requiring the release of all persons convicted on the basis of custodial interrogations under the totality of circumstances test.

For these reasons *Dino* will affect only those cases in which the trial began after June15, 1978.

II.

By this argument defendant urges that the trial court should have suppressed the confession because at the time of the confession defendant was being detained in a lock-up in California intended primarily for adult offenders, allegedly in violation of statutes proscribing such conduct in Louisiana and California.[1] When defendant was [1278] arrested in Victoria-

1. La. Rev. Stat. 13:1577:

"A. Whenever a child is taken into custody, unless it is impracticable or inadvisable or has been otherwise ordered by the court, he shall be released to the care of a parent, tutor or other custodian, upon the promise of such parent, tutor or custodian to bring the child to the court at the time fixed. The court may require a bond from such person for the appearance of the child and upon the failure of such person to produce the child when directed so to do, the court may, in addition to declaring the bond forfeited, punish that person as in case of contempt. If not so released such child shall be taken immediately to the court or to the place of detention designated by the court or probation officer. Any police officer, sheriff, probation officer, or other peace officer violating any of the terms of this section may be judged guilty of contributing to the act or condition which would bring a child within the provision of this chapter. Pending further disposition of the case, the child may be released to the care of a parent, tutor, agency or other person appointed by the court, or be detained in such place as shall be designated by the court or probation officer subject to further order.

"B. Nothing in this Chapter shall be construed as forbidding any peace officer from immediately taking into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his welfare. In every case the officer taking into custody any child for detention shall immediately and in any event within twenty-four hours, report the fact to the court or probation officer and the case shall then be proceeded with as provided by law. In addition, nothing in this Chapter shall be construed as forbidding any peace officer from taking into temporary custody during school hours any child who is required by law to attend school and is now exempted under the provisions of R.S. 17:226. where such child has absented himself or herself from school without proper authority, provided that the peace officer shall immediately place the child in a school facility or receiving center designated by the parish school board for acceptance of such child, or monentarily detaining any child from the age of seven through fifteen, both inclusive, who

ville, he was brought to a police substation and questioned. After the interview, he was placed in a cell and left there for about four hours until he had a second interview, at which he confessed. The cell in which he was placed was part of a separate-block with a locking door, built so that the police could segregate juveniles from adult prisoners. Other than a trusty who delivered his food and cleaned an adjoining cell, defendant did not say that he saw any prisoners.

1. Continued

appears to be absent from school during normal school hours, and inquiring of the circumstances relative to his or her being absent from school.

"CExcept as hereinafter provided, no child shall be confined in any police station, prison or jail, or be transported or detained in association with criminal, vicious or dissolute persons. A child fifteen years of age or older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults.

"D Whenever a child under the age of seventeen years is taken into custody by a peace officer or probation officer, except when the child willfully misrepresents himself as seventeen or more years of age, such child shall be released within seventy-two hours after having been taken into custody, excluding non-judicial days, unless within said period of time a petition to declare him a delinquent or a child in need of supervision has been filed pursuant to the provisions of this chapter.

"E Whenever a child who has been held in custody for more than twelve hours by a probation officer, or law enforcement official of the state, city, parish or municipality and subsequently released and no petition is filed, the said official shall prepare a written explanation of the reasons why the child was held in custody for more than twelve hours. The written explanation shall be prepared within seventy-two hours after the child is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, tutor, guardian, or other person having care or custody of the child."

Cal.Code Ann., Welfare & INstitutions §216(b);

"(b) To any person who violates any law of another state defining a crime, and is at the time of such violation under the age of 18 years, if such person thereafter flees from that state into this state. Any such person may be proceeded against as an adult in the manner provided in Chapter 4 (Commencing with Section 1547) of Title 12 of Part 2 of the Penal Code. The magistrate shall, for purposes of detention, detain such person in juvenile hall if space is available. If no space is available in juvenile hall, the magistrate may detain such person in the county jail."

[5] Although Louisiana's statute stipulates that minors shall not be confined in either a police station or jail, it allows children fifteen years of age or older to be detained in a place of detention for adults, as long as they are in a room or ward separate from the adults. This was the situation in this case and the brief encounter with the trusty can hardly be considered a confinement "in association with criminal, vivious or dissolute persons" which the statute condemns. In any event the statute does not purport to invalidate a confession when its proscriptions are not observed, only to punish the peace officer who placed the juvenile there. Improper confinement is only one factor in the totality of circumstances test. ***State in the interest of Wesley***, 285 S.2d 308 (La.App. 1973).

Minors who commit a crime in another state and flee to California are given less protection. They, other than for housing purposes, may be proceeded against as adults but must be detained in a juvenile hall if space is available, otherwise they may be confined in the county jail. Standard prodedure in that state is to complete the initial investigation before transferring a minor to a juvenile hall.

III.

[6,7] Proper application of the totality of circumstances test requires that the State sustain the burden of affirmatively proving that the waiver of rights was made freely and voluntarily, with understanding of the consequences which might flow from such a waiver. La.Rev.Stat. 15:451; ***State v. Hills***, 354 So.2d 186 (La.1977). Age of the defendant is a factor which requires this Court to give closer scrutiny to the confession of a juvenile than would ordinarily be required of an adult confession. ***State v. Sylvester***, 298 So.2d 807 LLa.1974).

There is no claim here that the defendant was beaten or coerced, promised anything as an incentive, or induced to confess on these grounds. His contention is simply that he did not

understand either his ***Miranda*** rights or the consequences of waiving them, so his attempted waiver is therefore invalid even under the pre-***Dino*** totality test.

[8] There is no litany of factors to be considered in applying the test. Each case is to be judged on all of the facts and circumstances in that particular situation. Obviously they will vary. At the suppression hearing these facts were adduced: Defendant is a fifteen-year-old minor, who completed 9th grade, and while average in math, was poor in reading. He and his brother were arrested at the residence of their sister where they were staying at 2:30 on the afternoon of Jun3. In their mother's presence they were informed that they were being arrested in connection with the theft of an automobile. Their mother was told that if she wanted further information, she would have to go to the police station. No mention was made at this time that the investigation involved murder. The boys were handcuffed and taken to the police station. In the way, they were read their ***Miranda*** rights from a standard police card. Both acknowledged that they understood their rights.

At the station defendant was "reninded" (but not read) of his rights, and asked if he understoof them. When he responded affirmatively, the officers began questioning him about the car theft. After about thirty minutes, they told him that his father had been shot, and asked if he could tell them anything about it. When defendant became nervous, the questioning was discontinued. At no time did he demand to see either an attorney or his mother, the officers testified. Defendant's testimony at the suppression hearing was to the contrary. He said that when the police began questioning him about the murder, he adked to see an attorney. When he did the policeman said "Okay, but let me ask you a couple more questions," according to defendant's testimony, and they asked him about his name, age other purely informational questions. It is uncontroverted that at no time thereafter did defendant ask to see his mother or an attorney. He said he did not because

he understood the policeman's response, "Okay," meant they would obtain counsel for him. No further explanation of the Miranda rights was given or requested. The police were convinced that defendant thououghly understood his rights.

Following this interview defendant was removed for booking and placed in a cell. While there the police interrogated his brother, who confessed and implicated defendant. Defendant testified that while he was in a cell, he talked to a man whom he supposed was a jailer (but was actually a trusty). The man told him that if he confessed, he would get three years at most. This testimony was not corroborated.

Defendant then sent for one of the detectives and asked if he could find out what his brother had said. He was told something to the effect that his brother had told everything, and about thirty seconds of the taped interview with his brother was played. He was again reminded of his rights and indicated that he understood them. Then, some six hours after being taken into custody, but after only forty minutes of interrogation, defendant made an inculpatory statement which was tape recorded. A short while later about 10 p.m., his mother was allowed to see him. Some ten hours after his arrest, Louisiana officers arrived in California. Basing their questions on defendant's prior statements, these officers questioned defendant after advising him of his rights. This confession was also recorded on tape.

These tape recordings were heard by the trial judge and in this Court. They show a careful, slow and deliberate interview, free of any hint of impropriety by the officers and expressing an unrestricted willingness on the part of defendant to disclose even the most minute details of the offenses. The recordings are the essence of voluntariness.

All of the circumstances support a finding of a free and voluntary confession. Defendant was no stranger to police pro-

cedure or contact with law enforcement authorities. having had several encounters with the law relating to juvenile delinquency. Within six weeks of these murders he had been in police custody on at least two occasions. He was arrested in his mother's presence and given the ***Miranda*** warnings immediately thereafter Four times thereafter he was reminded of these rights and acknowledged that he understood them.

The first interrogation lasted approximately 30 minutes, the second about 40 minutes. After his incarceration and prior to the first confession defendant was detained in a cell alone and was served a meal and permitted to rest.

In a ruling on the voluntariness of a confession the decision of the trial judge is assigned great weight. ***State v. Ross, 343 2d 722 (La.1977); State v. Payne,*** 338 So.2d 682(1976). In a careful and thorough per curiam the trial judge who presided at the suppression hearing reviewed the evidence and the law pertaining to the evidence he heard. Many of the crucial questiosn involved credibility determinations which he resolved in favor of a finding that [1280 La.] the confessions were free and voluntary. Our review of the evidence resolves the matter in favor of affirming that ruling.

For the reasons assigned, the convictions and sentences are affirmed.

TATE, J., dissents and assigns reasons.
DIXON, J., dissents.
DENNIS,J., dissents and assigns reasons.
TATE' Justice, dissenting.

I dissent for substantially the reasons that will be assigned by my brother DENNIS.

The rule announced in ***State in the Interest of Dino,*** 359 So.2d 386(La.1978) was designed to insure integrity of the fact-finding process.

The decision recognized the questionable voluntariness and

truthfulness of the confession of a juvenile, who responds to interrogation under police custody without consultation with an attorney or adult member of his family. The rule recognized the general unreliability of confessions of young persons (here, a 15-year-old boy), responding to interrogation while surrounded by adult police officers and secluded in police custody from the advice and counsel of adults who care.

Even adults, with more mature judgment and experience of the world, have been known to respond falsely in order to please their captors or to avoid the unknown but imagined terrors of a refusal to do so - witness *Miranda* and its prophylactic rule, designed to end the substantial danger in the administration of criminal justice of the use of false or coerced confessions in lieu of objective investigation in order to assure convictions.

In the present instance, the interrogation tactics appear to have been gentle and professional. There may be good reason to believe that, in this case, the confession of the defendant boy is not untruthful.

Yet *Dino* recognizes that children should not be sent to adult prisons for the rest of their lives on the basis of uncounselled confessions, inherently unreliable.

The reasons behind *Dino* demand, whether the confessions have been obtained before or after that decision, that it be applied to all confessions obtained from juveniles where they have not been permitted first to confer with adults of their family or a lawyer. That decision merely enunciated a protection for the integrity of the truth-finding process in prosecutions of juveniles of such obvious necessity that, even before *Dine*, many if not most enlightened law-enforcement agencies had already adopted the practice formally mandated by that opinion.

I therefore respectfully dissent.

DENNIS, Justice, dissenting.

State in the Interest of Dino, 359 So.2d 586 (La.1978) set forth this Court's view of what the prosecution must prove in order to show that a juvenile knowingly and intelligently waived his constitutional right to counsel and his privilege against self-incrimination before giving a confession. The prosecution bears a heavy burden of proving, not only that the waiver was made knowingly, intelligently and voluntarily, but also that the juvenile engaged in a meaningful consulation with an attorney or an informed parent, guardian or other adult interested in his welfare before waiving his rights. The majority opinion acknowledges this much of the *Dino* holding.

However, the majority opinion concludes that *Dino's* standards of official conduct in the interrogation of juveniles have nothing to do with the integrity of the fact-finding process. In my opinion the majority has overlooked some of the important underlying reasons for the *Dino* decision and the realities from which they are derived.

In *Dino* we plainly stated three reasons why juveniles should not be allowed to waive their constitutional rights on their own. In addition to the main reason-to assure that the waiver itself is knowing, intelligent and voluntary-we set forth two other reasons which relate to the voluntariness of the juvenile's confession, as well as to his waiver of rights. We said that "[1]f the juvenile decides to talk to his interrogators, the assistance of an adult can mitigate [1281] the dangers of untrustworthiness" and "the likelihood that the police will practice coercion;" and that "[t]he presence of such an adult can also help to guarantee that the accused gives a fully accurate statement and that the statement is rightly reported by the prosecution at trial." 359 So.2d at 592.

It is evident, therefore, that the *Dino* rule does go to the integrity of the fact-finding process. When a confession is ad-

mitted into evidence it has such a persuasive effect upon the trier of fact as to substantially determine the outcome of the fact-finding process. Consewuently, the determination of guilt or innocence is usually predetermined at the time the confession is obtained. ***See, State v. Glover,*** 343 So.2d 118, 129 (La.1977); Comment, ***The Coerced Confession Cases in Search of a Rationale,*** 31 U.Chi.L.Rev. 313, 325 (1964). Obviously then, the *Dino* rule, which seeks to insure trustworthiness, voluntariness and accurate reporting of juvenile confessions, is vitally concerned with the ultimate fact of guilt or innocence and the process by which it is determined.

Under our established principles of interpretation a new constitutional doctrine must be given complete retroactive effect when its major purpose is to overcome an aspect of the judicial proceeding which impairs its truth finding function and so raises serious questions about the accuracy of determinations of guilt in past trials. ***State v. Swift,*** 363 So2d 499 (La. 1978); ***State v. King,*** 347 So.2d 1108 (La.1977); ***City of Baton Rouge v. Short,*** 345 So.2d 37 (La. 1977); ***cf. Ivan v. City of New York,*** 407 U.S. 203, 92 S.Ct. 1951, 32 L.Ed.2d 659 (1972); ***Williams v. United States,*** 401 U.S. 646, 91 S.Ct. 1148, 28 L.Ed.2d 388 (1971); ***Linkletter v. Walker,*** 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965).

Since the major function to be served by *Dino* is the major function to be served by *Dino* is the prevention of unfair determinations of guilt based on improvident or untrustworthy juvenile confessions, it is clear that *Dino* should be given complete retroactive effect.

Moreover, other factors which wiegh against retroactive effect of a new constitutional doctrine do not apply to *Dino*. The extent of reliance on the old rule by Louisiana law enforcement officials was not significant and *Dino's* impact on the administration of justice will not be severe. ***See, Williams v. United States, supra.*** The decision in *Dino* merely required by law a procedure already followed in practice by many Louisiana

police officers. ***See, State in the Interest of Dino,*** 359 So.2d 586, 592-93 (La. 1978); Comment, ***Louisiana's Youth Law: Rules and Practice,*** 35 La.L.REv. 851, 856 (1975). The practice now required by *Dino* was foreshadowed in numerous state and federal decisions. In ***State v. Ross,*** 343 So.2d 722, 729 (La.1977), members of this Court noted that, in proceedings against juveniles, most investigating offers took the precaution of allowing a juvenile to confer with a family member before a waiver of his rights, and commended the procedure. As early as 1948, the United States Supreme Court recognized that a juvenile's isolation from any friendly adult prior to police interrogation raised serious questions concerning voluntariness. ***See, Haley v. Ohio,*** 322 U.S. 596, 68 S.Ct. 302, 92 L.Ed.224 (1948). ***See Also, Gallegos v. Colorado,*** 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962).

For all of these reasons, but primarily because uncounselled guilty pleas by children substantially impair the truth finding functions of juvenile and adult courts, I respectfully dissent from the majority's refusal to give complete retroactive effect to the constitutional rule announced in *Dino*.

STATE V. COLLUM
Cite as, La. 365 So.2d 1272
365 SOUTHERN REPORTER, 2d SERIES
WEST KEY NUMBER SYSTEM

APPENDIX B

STATE IN THE INTEREST OF COLLUM

364 So.2d 166, (La. App. 1st Cir. 1978)

STATE OF LOUISIANA
In the INTEREST OF Scotty Lynn COLLUM
No. 12163
Court of Appeal of Louisiana,
First Circuit.
Oct.9, 1978.

Juvenile moved to suppress a confession. The 17th Judicial District Court, Parish of LaFourche, Walter I. Lanier. Jr.. J., denied motion to suppress, and defendant appealed. The Court of Appeal, Ponder, J., held that purported waiver of rights by juvenile was ineffective and confession and inculpatory statement should have been suppressed.

Reversed and remanded.

1. Criminal Law key 527

Although 13-year-old was given *Miranda* warnings several times by California law enforcement officials who questioned him, where juvenile was questioned without being allowed to consult with an attorney interested in juvenile's welfare or an adult interested in juvenile's welfare and fully advised as to juvenile's rights before giveing the confession, purported waiver of rights to counsel and against self-incrimination were ineffective and confession and inculpatory statements should have been suppressed. LSA-R.S. 13:1577, subd. C;U.S. C.A. Const. Amend. 5; LSA-Const. art. §13.

2. Courts Key 100(1)

Holding that purported waiver by juvenile of his rights must be adjedged ineffedtive upon failure by State to establish any of three prerequisites to waiver would be given retroactive effect.

Infants Key 16.4

Minors: Acceptance of guilty plea with reservation of right to appeal the denial of the motion to suppress is a procedure which may be used in juvenile cases.

Walter K. Naquin, Jr., and Jerome J. Barbera, III, Asst. Dist. Attys., Thibodaux, for plaintiff and appellee.

R. Dwain Blakley and Wilson F. Walters, Denison, Tex., and Fred J. Kleppner, Metairie, for defendant and appellant.

Before LANDRY, COVINGTON and PONDER, JJ.

PONDER, Judge.

Defendant, a juvenile, appealed from the judgment denying his motion to suppress a confession.

The issue is the admissibility of taped confessions and statements taken purportedly in violation of the United States Constitution [1] and the Louisiana Constitution[2] and of LSA-RS. 13:

1. U.S. Const., 5th Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. La.Const. of 1974, Art. 1 § 13.

"When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his

1577(C)[3].

[167] We reverse and remand.

Admittedly, Scotty Lynn Collum, a thirteen year old, was given the *Miranda* warnings several times by the California law enforcement officials who questioned him. Admittedly, also the juvenile was questioned without being allowed to consult with an attorney interested in the juvenile's welfare or an adult interested in the juvenile's welfare and fully advised as to the juvenile's rights before giving the confession. The State, however, contends that the juvenile waived his rights to counsel and against self-incrimination.

In the case of *State, In the Interest of Dino,* 359 So.2d 586 (La. 1978) the court said:

". . . the purported waiver by a juvenile must be adjudged ineffective upon the failure by the State to establish any of three prerequisites to waiver, viz., that the juvenile actually consulted with an attorney or an adult before waiver, that the attorney or adult consulted was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile."

2. Continued

right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensatting qualified counsel for indigents."

3. LSA-R.S. 13:1577(C):

"Except as hereinafter provided, no child shall be confined in any police station, prison or jail, or be transported or detained in association with criminal, vicious or dissolute persons. A child fifteen years of age or

[1] We hold, therefore, that the purported waiver was ineffective and the confession and inculpatory statements should have been suppressed.

[2] The State contends that the *Dino* holding should not be given a retroactive effect. The Supreme Court, in granting a writ and reversing in *State of Louisiana, In the Interest of Leander Jones*, 360 So.2d 1181 (La. 1978). gave instructions to reconsider in light of the *Dino* case. The relevant facts in the *Jones* case are indistinguishable form those in the present case.

[3] While the procedure employed, that is of acceptance of a guilty plea with reservation of right to appeal the denial of the motion to suppress, is unusual, it has been approved in criminal cases. See *State v. Crosby*, 338 So.2d 584 (La. 1976). We approve the use in juvenile cases.

We do not reach the wuestion of the purported violation of LSA-R.S. 13:1577(C), in view of the above conclusions.

The judgment overruling the motion to suppress is reversed. The case is remanded to the juvenile court for futher proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.
WEST KEY NUMBER SYSTEM

3 Continued
older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults."

APPENDIX C

STATE IN THE INTEREST OF COLLUM
(On rehearing)
368 So.2d 460, (La. App. 1st Cir. 1979)

STATE of Louisiana In the INTEREST of Scotty Lynn COLLUM

No. 12163

Court of Appeal of Louisiana, First Circuit

On Rehearing Jan. 16, 1979

Juvenile moved to suppress a confession. The Seventeenth judicial District Court, Parish of LaFourche, Walter I. Lanier, Jr., J., denied the motion to suppress, and the juvenile appealed. The Court of Appeal, 364 So.2d 166, held that the confession should have been suppressed. There after, a rehearing was granted to reconsider the decision in view of an intervening ruling of the Louisiana Supreme Court. The Court of Appeal, Ponder, J., held that: (1) the rule that a juvenile cannot waive his constitutional right against self-incrimination without consulting an attorney or an adult both interested in the juvenile's welfare and fully advised of the juvenile's rights had only prospective application, and (2) the juvenile was not entitled to suppression of the confession.

Prior decision recalled and judgment of trial court affirmed.

1. Courts Key 100(1)

Rule that a juvenile could not waive his constitutional right against self-incrimination without consulting an attorney or an adult both interested in the juvenile's welfare and fully advised of the juvenile's rights would be given only prospective effect.

2. Criminal Law Key 519(8)

Although 13-year-old was being detained in lockup in California that was intended primarily for adult offenders when he was questioned by California law enforcement officials who ultimately obtained a confession after giving the juvenile his *Miranda* warings several times, circumstances established that the confession was voluntary and, therefore, juvenile was not entitled to suppression of the confession.

Walter K. Naquin, Jr., and Jerome J. Barbera, III, Asst. Dist. Attys., Thibodaux, for plaintiff and appellee.

R. Dwain Blakley and Wilson F. Walters, Denison, Tes., and Russell O. Ayo, Jr., Thibodaux, for defendant and appellant.

Before LANDRY, COVINGTON and PONDER, JJ.

PONDER, Judge.

We granted a rehearing to reconsider our first opinion in view of the Supreme Court's decision in *State of Louisiana v. Collum*, La. 365 So.2d 1272, 1978.

In our first opinion we applied the holding of *State, In the Interest of Dino*, 359 So.2d 586 (La.1978) that a juvenile could not waive his constitutional right against selfincrimination without consulting an attorney or an adult both interested in the juvenile's welfare and fully advised of the juvenile's rights. For retroactive application of *Dino*, we relied on *State of Louisiana, In the Interest of Leander Jones*, 360 So.2d 1181 (La.1978) in which the Supreme Court reversed our decision, reported at 357 So.2d 636, and remanded for reconsideration in light of the *Dino* case.

[1] We were in error. *In state v. Collum, supra*, concerned with the confession of Donnie Collum, the 15 year old brother of Scotty Collum, the Supreme Court held that the *Dino* decision will affect only those cases in which the trial began after June 15, 1978.

[2] The appellant contends that the confession should have been suppressed because defendant was being detained in a

lock-up in California intended primarily for adult offenders, allegedly a violation of Louisiana [1] and California[2] statutes.

[461] The same contention was made in ***State v. Collum, supra,*** and was rejected on two grounds: (1) our statute allows those 15 year old or older to be detained in an adult detention place if in a separate room or ward; (2) improper detention is only a factor in the totality of circumstances test for free and voluntary nature of a confession and does not invalidate per se a confession obtained during the statute's violation. The first reason does not apply to Scotty Collum since he was thirteen years old at the time.The second reason applies, however, and we reject appellant's contention that the confession should be suppressed because of that violation. We do consider it as one of the factors in the totality of circumstances test.

In detailed, meticulous written reasons for judgment, the trial court considered all the relevant factors to be considered in determining the free and voluntary nature of the confessions and inculpatory statements, We find no error.

Furthermore, the Supreme Court in***State v. Collum, supra,*** considered the facts surrounding Donnie Collum's confession and found it to be free, voluntary and admissible. Except for the age of the defendants and minor differences of time and circumstances that we find to be immaterial, Donnie's and Scott's confessions were obtained under circumstances so nearly identical as to dictate a like result.

For these reasons, our prior decision is now recalled and there is now judgment affirming the trial court's denial of the motion to suppress.

AFFIRMED.

1. LSA-R.S. 13:1577
2. Calif. Code Ann. Welfare & Institutions, § 216(b).

WEST KEY NUMBER SYSTEM

APPENDIX D

STATE IN THE INTEREST OF COLLUM

(Denial of Certiorari)

No. 64,336, Louisiana Supreme Court (1979)

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

STATE OF LOUISIANA — April 27, 1979
IN THE INTEREST OF:
SCOTTY LYNN COLLUM — NO. 64,336

IN RE: Scotty Lynn Collum, applying for Certiorari, or writ of Review to the Court of Appeal, First Circuit, Parish of Lafourche No. 12,163.

Writ denied.

FWS
PFC
WFM
FAB
TATE, DIXON & DENNIS, J.J., Would grant the writ.

A TRUE COPY
CLERK'S OFFICE
SUPREME COURT OF LOUISIANA
NEW ORLEAANS
April 27, 1979

/s/ ILLEGIBLE
Clerk of Court

APPENDIX E

DONNIE FRANKLIN COLLUM, Petitioner
VS. LOUISIANA

(Order Extending Time to File Petition for Writ of Certiorari)
UNITED STATES SUPREME COURT (1979)

SUPREME COURT OF THE UNITED STATES
No. A-777
DONNIE FRANKLIN COLLUM,

Petitioner,

V.
LOUISIANA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(x), IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 13, 1979.

/s/ Lewis F. Powell, Jr.
Associate Justice of the Supreme
Court of the United States
Dated this 6 day of March, 1979.

APPENDIX F

STATE OF LOUISIANA IN THE INTEREST OF LEANDER JONES

360 So.2d 1181 (La. 1978)

STATE of Louisiana in the interest of Leander JONES.
No. 62048
SUPREME COURT OF LOUISIANA
July 3, 1978

In re: Leander Jones applying for certiorari, or writ of review, to the Court of Appeal, First Circuit. Parish of Ascension. 357 So.2d 636.

Writ granted. Judgment of Court of Appeal is reversed and case is remanded to Court of Appeal for reconsideration in light of *State v. Dino*, La., 359 So.2d 586.

SANDERS, C. J., and SUMMERS and MARCUS, JJ., dissent.

APPENDIX G

STATE VS. COLLUM, MEMORANDUM OF TRIAL COUNSEL

STATE OF LOUISIANA
VS. NO.
DONNIE FRANKLIN COLLUM

STATE OF LOUISIANA
PARISH OF LAFOURCHE
17th JUDICIAL DISTRICT
COURT

MEMORANDUM AND SUPPORT OF MOTION TO SUPPRESS CONFESSION

FACTS

On May 27, 1977, Jessie Collum, his wife and 2 children were killed in Lafourche Parish. His automobile and two sons by a previous marriage, Donnie and Scott Collum, were missing. Later, Lafourche Parish deputies learned that Scott and Donnie Collum had been stopped by police in Benson, Arizona in an automobile which they identified as belonging to their father and admitted taking without his consent. The vehicle was left in Arizona and the boys were turned over to their mother in Victorville, County of San Bernadino, California who returned the boys to her home there. On June 3, 1977, Lafourche Parish deputies secured arrest warrants for Scott and Donnie Collum on a charge of auto theft. They then phoned to Victorville, California and requested the arrest and detention of Donnie and Scott Collum by San Baenadino Sheriff's deputies with whom they had been cooperating for several days.

At about 2:30 p.m., Pacific time, on June 3, 1977, Scott and Donnie Collum were arrested for auto theft, handcuffed, placed into a police unit; and, while the unit was turning around and driving off, were read the Miranda rights from a card by the driver of the unit, Deputy Robert Woodrum. Thereafter they were never again were read or told their Miranda rights by California police, but were reminded that they had been read. They were transferred to the Sheriff's office substation which is a police facility occupied by uniformed policeman and containing cells for incarceration of prisoners. At the police station, handcuffs were removed from one hand and they were handcuffed to chairs in separate interrogation rooms.

Two facts should here be noted:

(1) The law of California prohibits the detention of a juvenile in any police station or similar facility unless a Judge of the juvenile court has authorized detention in such a place.

(2) At the time of this arrest, Donnie Collum was 15 years of age, Scott Collum was 14.

Deputy Woodrum and his superior Sergeant Charles Sodaro commenced the interrogation of Donnie Collum in the police station while he was handcuffed to a chair. They began the interrogation relative to theft of the automobile and then moved to the subject of the killing of Jessie Collum and his family. At that time Donnie Collum asked for a lawyer. Although Sodaro and Woodrum deny that Donnie made this request for an attorney, they only asked a few more unimportant questions and stopped the interrogation. Sodaro and Woodrum contend that they stopped the interrogation at this point only out of compassion for Donnie Collum because he became nervous and emotionally upset at the mention of his father's death. Donnie Collum was then moved to a cell where he was in contact with other prisoners, specifically trustees whom he believe to be "jailers." One of those prisoners discussing his case, lead Donnie to believe that he could probably get probation or "3 years at the most." All of Donnie's actions thereafter were effected and influenced by the advice of this prisoner whom he mistook for a jailer.

While Sodaro and Woodrum were interrogating Donnie, Mrs. Peggy Mendoza, their mother, arrived at the police station. She and her sons had been told at this time of the arrest that they were being taken in for auto theft. She immediately, called Lafourche Parish to determine whether Jessie Collum or his wife had "pressed charges" against the boys for taking their father's car. She was told that neither Jessie or his wife

had signed any charges. She was also told that Jessie had been shot, however, she was not told when he had been shot, and assumed only that he had been wounded subsequent to the boys leaving Louisiana. Mrs. Mendoza felt thoroughly competent to handle any charges relative to theft of the automobile. She intended to confront her ex-husband with a choice of paying child support, which he had never done, or getting the auto theft charges dropped. She was at no time told that they were going to be interrogated relative to murder. When she arrived at the Victorville Station she wanted to see her boys and take them home because "no charges had been filed." Although Sergeant Sodaro denies it, he or someother officer came out of the interrogation room and told her to go home and wait until she was called. She did go home as she was told, and did wait until she was called. Sodaro and Woodrum, after terminating Donnie's interrogation when he requested counsel, went after Scott Collum in the adjoining room under the same conditions. Sodaro and Woodrum secured a confession from Scott Collum. During the interrogation of Scott, Donnie sent word to Sodaro that he wished to see him. Upon completing Scottie's interrogation, Sodaro sent for Donnie, whose only purpose for wanting to see Sodaro was to ask him if he could see Scott and inquire as to what Scott had said. It is not even suggested by Sodaro and Woodrum that Donnie wanted to talk to them about the crimes. However, when Donnie asked what Scott had said they told him that Scott had confessed and played a part of a tape of Scott's statement to him and then began to interrogate him again, which interrogation produced an alleged confession.

After Sodaro and Woodrum had secured a taped statement, a call was made to Mrs. Mendoza informing her that she could now come down the station. Upon her arrival of the station she was told that her sons had confessed to four murders, and understandably, she went into shock and emotional upset. When Mrs. Mendoza arrived at the police station, Sodaro and Woodrum were leaving to go to the airport to pick up La-

fourche deputies, Norman Diaz and Dennis Rodrigue. It should here be noted that Sodaro and Woodrum knew before they arrested Donnie and Scott Collum that the Louisiana officers were on their way to California and were due to arrive in 6 to 8 hours. It should also be noted that these officers knew that Donnie and Scott Collum had committed no crime in the state of California. They had been working cooperatively with the Lafourche deputies for several days and cooperated with them by interrogating the boys while the case was hot, so to speak. At sometime near midnight, Deputies Diaz and Rodrigue arrived at the Victorville police station and spoke with Mrs. Mendoza. They state that they told her that they were going to interrogate the boys and that she had a right to be present. There is no reason to doubt them. Mr. Mendoza does not recall this, however, her mental and emotional state at the time was such that it is obvious that she was too distraught and preoccupied to comprehend what the officers were talking about, and understood only that the officers were going to talk about the murders. Deputies Diaz and Rodrigue state that she asid she had "already heard that." Mrs. Mendoza has no recollection of that statement but, as stated before, it is not surprising that she should have failure of memory of those events. Although she claims to have found strength in prayer, she would certainly have been shocked and emotionally upset.

Deputies Diaz and Rodrigue read the Miranda rights to Donnie and Scott Collum and took taped statements from them. It should be noted that in the Sodaro and Woodrum interrogations the Miranda rights were read only once, while the police unit was being backed out and turned around from the Collum residence at the time of the arrest, and thereafter the boys were only reminded of the rights which has been read to them. While Donnie stated that he understood the Miranda rights before and during the interrogation, at the time of this hearing he still did not have a complete, intelligent comprehension of all the facets of the Miranda warning.